

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LIGHTBOX VENTURES, LLC,

Plaintiff, :

16cv2379 (DLC)

-v-

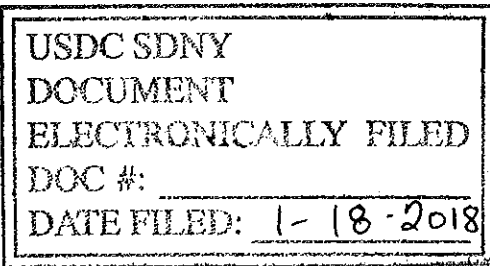
ORDER

3RD HOME LIMITED and WADE SHEALY,

Defendants.:

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DENISE COTE, District Judge:



Plaintiff Lightbox Ventures, LLC ("Lightbox") seeks an award of \$195,784.55 in attorneys' fees and expert expenses in connection with the forensic examination of the defendants' email account. For the following reasons, Lightbox is granted an award of \$38,888.01 jointly and severally against the two defendants.

Background

Lightbox filed this action on March 31, 2016. It is essentially a contract dispute arising out of a failed joint venture agreement. On October 28, 2016, the plaintiff's motion for a preliminary injunction was denied. Lightbox Ventures, LLC v. 3rd Home Ltd., No. 16cv2379 (DLC), 2016 WL 6562107 (S.D.N.Y. Oct. 28, 2016).

On October 21, 2016, the Court ordered that counsel for the defendant review the defendant Wade Shealy's email server and submit a declaration stating whether any additional documents responsive to the plaintiff's document demands had been discovered. Defense counsel having failed to comply, on November 1, 2016 the Court required an independent forensic examination of the electronic servers and relevant personal devices of Shealy and 3rd Home Limited, with the costs of the investigation by the forensic expert, "including reasonable attorneys' fees associated with the investigation," to be awarded to Lightbox in the event that the investigation revealed a material failure to produce documents. A November 15 Order approved a protocol for the examination. In December 2016, the examination identified 91 documents that were responsive to discovery demands that the defendants had failed to produce.

The law firm of Scarola, Malone & Zubatov (the "Scarola Firm") represented Lightbox through the filing of this action until March 2017. The Scarola Firm applied for the forensic examination and succeeded in obtaining it.

Plaintiff's counsel Brem Moldovsky (the "Moldovsky Firm") filed a notice of appearance on March 1, 2017 and continues to represent the plaintiff. On December 1, the Moldovsky Firm made the motion for the award of attorneys' fees in connection with

the forensic examination and together with the Scarola Firm has presented evidence in support of the award requested below.

A stay was entered in this action on February 14, 2017 for a period through March 31. On September 15, Lightbox filed a motion for reimbursement of costs associated with the forensic review. That motion was granted on November 15. Lightbox Ventures, LLC v. 3rd Home Ltd., No. 16cv2379(DLC), 2017 WL 5526073 (S.D.N.Y. Nov. 15, 2017). Lightbox was thereafter permitted to submit evidence of its costs and expenses, including attorneys' fees. The parties' submissions regarding the appropriate amount of the award were completed on December 22.

Meanwhile, on November 13, the Court ruled on the parties' motions for summary judgment. Lightbox Ventures, LLC v. 3rd Home Ltd., No. 16cv2379(DLC), 2017 WL 5312187 (S.D.N.Y. Nov. 13, 2017). Trial is scheduled to be held on March 12, 2018.

Discussion

Under Federal Rule of Civil Procedure 37, courts must require a party that fails to comply with a court order to pay "the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R.

Civ. P. 37(b)(2)(C). As discussed in the Court's November 15, 2017 Order, because the defendants failed to produce 91 relevant documents to the plaintiff, the plaintiff is entitled to the reasonable expenses it incurred in connection with the forensic examination of the defendants' electronic servers.

Lightbox seeks reimbursement of \$17,934.14 and \$953.87 it paid to its forensic examiner. The defendants do not oppose that award, and it is granted in its entirety.

Lightbox seeks an award of attorneys' fees of \$114,715.55 to the Scarola Firm. It is awarded \$10,000 in connection with its demonstrations that the defendants' document productions were likely defective and that a forensic examination was warranted, and in connection with its submissions on this application.

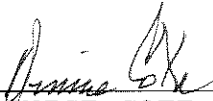
Lightbox seeks an award of attorneys' fees of \$69,669 to the Moldovsky Firm. It is awarded \$10,000 in connection with the motion for an award of fees and the pending application for an award in a specific amount. Its request for reimbursement for the expense associated with document review is denied.

Conclusion

The December 1, 2017 motion for an award of attorneys' fees and expenses to Lightbox is granted in part. Lightbox is

awarded \$38,888.01 jointly and severally against the two defendants.

Dated: New York, New York
January 18, 2018



DENISE COTE
United States District Judge